BDP/sid 4/15/2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Robert E. Kaveney, Complainant, v. Verizon California, Inc. and Verizon Select Services, Defendants.	(ECP) Case 01-11-010 (Filed November 7, 2001)

ADMINISTRATIVE LAW JUDGE'S RULING INVITING COMMENTS

My draft decision in this proceeding is attached. The parties may file comments no later than Monday, April 29, 2002. Comments must be served separately on the ALJ.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become final on the parties.

Dated April 15, 2002, at San Francisco, California.

/s/ BERTRAM D. PATRICK
Bertram D. Patrick
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Inviting Comments on all parties of record in this proceeding or their attorneys of record.

Dated April 15, 2002, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

ATTACHMENT A

DRAFT OPINION ON BILLING COMPLAINT

The Commission orders Verizon California Inc. (Verizon California) and Verizon Select Services Inc. (VSSI) (collectively, Verizon or Defendants) to credit the account of Robert E. Kaveney (Complainant) all charges for VSSI's Bundled Plan B and to rebill the account for basic telephone services as he had prior to signing up for Plan B. The Commission also requires Defendants to refund 36 months of charges for rental of telephone equipment.

Caller ID Service

Complainant states he signed up for Bundled Plan B[1] only because he wanted Caller ID Service and it did not work as expected. Complainant alleges that VSSI did not inform him that other customers would have the ability to block their IDs. He argues that he needs to know the ID of every caller, or the service is of no use to him. He alleges that VSSI engaged in deceptive advertising and requests that the $33.95 per month charge for Bundled Plan B be rescinded for the entire period since installation covering approximately six months.

VSSI states that for a period of time Complainant's Caller ID feature was not working due to incorrect activation but it was subsequently activated correctly. Complainant was issued a $10 Valued Customer credit for the inconvenience associated with this error. Complainant continued to experience problems with Caller ID, indicating that he was receiving "private" and "out of

[1] Bundled Plan B includes: local telephone service, 100 long distance minutes and two features like Caller ID and Call Waiting.

area" messages on incoming calls. Complainant was advised that such numbers could not be displayed on Caller ID. VSSI points out that under Commission Decision (D.) 96-04-049, customers are permitted to block their calls and Caller ID is not able to display those calls.

We believe that Complainant has a valid argument. Complainant's position is that he signed up for Bundled Plan B because it included Caller ID and he needed to know the ID of all incoming calls, or the service was of no use to him. VSSI's sales literature does not inform customers that the service cannot display the ID of all incoming calls. It would have been a simple matter for VSSI to have inserted a sentence in its sales literature pointing out this limitation. Therefore, we conclude that Complainant should be restored to his former position. He should receive a full credit for all charges for Bundled Plan B and his bills for telephone service for the period in dispute should be recalculated on the basis of the services he had prior to signing up for Bundled Plan B.

Telephone Equipment Rental

Complainant also disputes a $4.48 per month charge for non-basic service for telephone equipment rental. He states that he has provided his own telephone from the time the Commission allowed customers to use their own equipment in 1987. He only became aware of this charge on his billing statement when he disputed the Caller ID charge. He alleges that Defendants' billing description of the charge as "non-basic" is deceptive and requests a refund of these charges back to the date of the Commission's decision in 1987.

Complainant has no recollection of what happened to the Defendants' telephone instrument. He argues that even if Defendants' records show that he still has their telephone, they have made no effort to verify that he has the telephone, or the condition of the telephone in the last 14 years.

Defendants state that as a consequence of the deregulation of Customer Premises Equipment (CPE), D.86-08-056, GTEL, the entity providing CPE rental, includes CPE charges on customer monthly regulated utility bills rather than as a separate bill generated by GTEL as a cost saving measure (*Id.* at pages 3 and 9). Further, Defendants state that Verizon California has communicated directly in writing with its customers through customer notices intended to explain the options available with respect to CPE rental and their costs. These written notices have taken the form of separate mailings, bill inserts, bill messages, brochures and references written in telephone directories.

We have no reason to conclude that Complainant did not receive the notices that Verizon California sent to all customers. On the other hand, Defendants have not offered any evidence that Complainant had a telephone owned by GTE in his possession after 1987 or that they bothered to check on the existence of the instrument over the last 14 years. Therefore, we conclude that Complainant should receive reparations limited to 36 months for these charges. (Public Utilities Code Section 763. Also, see In Re Retroactive Billing by Gas and Electric Utilities, 21 CPUC2d 270, 278.)

We reject Complainant's argument that he should receive a refund of telephone equipment rental charges going back to 1987. In D.85-08-097 (August 21, 1985), the Commission required independent telephone companies to provide customers three distinct service alternatives with respect to CPE: (1) continue renting CPE from their telephone service providers; (2) buy the telephones from the providers outright; or (3) obtain telephones from other sources and have the option to pay a maintenance fee. (18 CPUC2d 670, 677, 682-83.) The Commission concluded that continuing to make available CPE for a monthly fee that would include maintenance would serve the needs of the many

customers who "adhere to a traditional view of telephone service, frequently out of concern that prompt telephone repair service is essential and best obtained from the local telephone utility." (*Id.* At 677.) To ensure adequate and effective notice of the detariffing process and the resulting customer options, the Commission ordered that the independent telephone companies provide specific notices to their customers informing them of these three options. (*Id.*) In D.86-08-056 (August 18, 1986), the Commission further ordered that GTEL, the entity providing CPE rental, include CPE charges on customer monthly regulated utility bills rather than a separate bill generated by GTEL as a cost saving measure. (*Id.* at pp. 3 and 9.) We have no reason to believe that Complainant did not receive notice of his CPE options following the issuance of D.85-08-097. Regarding, the Statute of Limitations. D.94-04-057 states:

> "The statute of limitations is tolled until a plaintiff discovers or should have discovered the facts essential to the cause of action." (*CAMSI IV v. Hunter Technology Corp.* (1991) 230 Cal. App. 3d 1525, 1536, *Leaf v. City of San Mateo* (1980) 104 Cal. App.3d 398.) (54 CPUC2d 122, 125.)

For the reason that Complainant received adequate notice regarding his options related to CPE the Statute of Limitations is not tolled and the Complainant is not entitled to reparations beyond 36 months.

Complainant requests punitive damages because Defendants twice terminated services and allegedly subjected him to the most harsh collection tactics. Complainant's request should be denied for the reason that the Commission does not have jurisdiction to award punitive damages.

PROPOSED ORDER

1. Verizon California Inc. (Verizon California) and Verizon Select Services Inc. (VSSI) (collectively, Verizon) shall recompute the account of Robert F. Kaveney (Complainant) as follows:

    a. Credit Complainant's account for all charges related to Bundled Plan B, including the connection charge of $46.

    b. Rebill Complainant's account for the period in dispute for basic telephone services as he had prior to signing up for Bundled Plan B.

    c. Credit Complainant's account for 36 months of telephone equipment rental charges.

    d. Credit Complainant's account for all charges related to disconnection.

    e. Upon settlement of all outstanding billing amounts, restore Complainant's credit rating to its former status.

2. Complainant's request for punitive damages is denied.

3. This proceeding is closed.

This order is effective today.

Dated _____, at San Francisco, California.